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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,962	03/26/2004	Clifton A. Alferness	11998.5USC8	7915

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Attn: Anna M. Nelson
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EXAMINER

GILBERT, SAMUEL G

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/809,962

Applicant(s)

ALFERNES ET AL.

Examiner

Samuel G. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18, 19, 22-28, 34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18, 19, 22, 23, 25, 26, 34 and 35 is/are rejected.
- 7) ☒ Claim(s) 24 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/17/2005 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 – it is unclear how this claim differs from claim 18 after the amendment of claim 18 to include the jacket “surrounding” the heart.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 18, 19, 22, 23, 28 and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Wanat et al (5,839,842). The examiner is taking only jacket –2- of the entire kit of Wanat et al to meet the claims as set forth below.

Claims 18, 23, and 28 – element –2- forms a jacket, the jacket has an open end shown at –6-, and the jacket may be formed from polyethylene, a biocompatible material. The diamond pattern allows for differential expansion of the jacket with the diamond pattern oriented as shown in figure 1. It is the examiner's position that the jacket of Wanat et al is with the diamond pattern oriented as shown is inherently capable of performing the other functions set forth in the functional language of the claim. The claim language does not set any specific size for the jacket only a size relative to the size of an undefined heart, therefore if one selects a heart of the appropriate size any size net would meet the relative limitations set forth in the claims.

Claim 19 – the examiner is taking each leg of the diamond pattern as elongated members.

Claim 22 – the jacket is configured to constrain at least a lower portion of the heart.

Claim 35 – the jacket includes a closed end.

Claims 18, 19, 22, 23, 26, 28, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Field (1,682,119).

Claims 18, 22, 23, and 28 – metallic envelope –2- is a jacket, both ends of the envelope are open and both ends may be selectively closed. German silver may be used for the jacket and German silver is biocompatible. The material pattern shown in figure 3 and arranged as shown in figure 1 provides for a jacket having the particular expansion properties as claimed in the functional language set forth in the claims. The claim language does not set any specific size for the jacket only a size relative to the size of an undefined heart, therefore if one selects a heart of the appropriate size any size net would meet the relative limitations set forth in the claims.

Claim 19 – elongate members form cells as shown in figure 3.

Claim 26 – the members may be silver.

Claims 34 and 35 – the jacket as taught by Filed has open ends that are selectively closed by elements –3-. Before either end is closed the jacket has two open ends and after one end is closed and before the second end is closed the jacket would have one open end and one closed end.

Claims 18, 19, 22, 23, 28 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Mercer et al (3,551,543).

Claim 18, 22, 23, 28, and 29 – a jacket is set forth by the tubular net, column 4 lines 63 and 64. The tubular net inherently has two open ends and the net is

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specifically designed to have differential expansion properties wherein the jacket is more readily expandable in the longitudinal direction than in a direction traverse to the longitudinal direction. The claim language does not set any specific size for the jacket only a size relative to the size of an undefined heart, therefore if one selects a heart of the appropriate size any size net would meet the relative limitations set forth in the claims.

Claim 19 – elongated members are set forth in elements –1-, -2- and –3-.

Claim 34 – the tubular net inherently has two open ends.

Claims 18, 19, 22, 23, 25, 28, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Mehler(2,376,442).

Claims 18, 23, and 28 – element –10- forms a jacket, the jacket may be knotted at –11- and –12- therefore either or both ends may be open or closed. The diamond pattern allows for differential expansion of the jacket with the diamond pattern oriented as shown in figure 1 which is inherently capable of performing the other functions set forth in the functional language of the claim. The claim language does not set any specific size for the jacket only a size relative to the size of an undefined heart, therefore if one selects a heart of the appropriate size any size net would meet the relative limitations set forth in the claims. The specific material to make the netting is not set forth, however it appears that the material would be the same as used for other fish netting devices as described in column 1. Matheson(4,466,331) lists a variety of materials well known in the net making art used for making fish nets, column 1 lines 53-59.

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Polyethylene is a well-known material in the net-making arts, therefore it is clear to one of ordinary skill in the art in the absence of any specific guidance in Mehler itself that polyethylene may be selected to make the net of Mehler. The examiner is taking polyethylene to be a biocompatible material.

Claim 19 – the examiner is taking each leg of the diamond pattern as elongated members.

Claim 22 – the jacket is configured to constrain at least a lower portion of the heart.

Claim 25 a plurality of fibers are used, applicant's attention is invited to Figure 2.

Claim 34 – the ends –11- and –12- are open before they are closed.

Claim 35 – the jacket includes a closed end –11- or –12-.

Allowable Subject Matter

Claims 24 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claim 18, 19, 22, 22-28, 34 and 35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 2,138,603; 4,466,331; 6,205,747; 3,384,530; 4,790,850; 5,207,725; 3,732,662; and 3,768,643 teach related meshes, nets and materials.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ali Imam can be reached on 571-272-4737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G. Gilbert
Primary Examiner
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